

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HOBART CORPORATION, *et al.* :

Plaintiffs,

v. :

THE DAYTON POWER & LIGHT
CO., *et al.*, :

Defendants.

Case No. 3:13-cv-115

JUDGE WALTER H. RICE

DECISION AND ENTRY SUSTAINING PLAINTIFFS' MOTION TO
SUPPLEMENT SUMMARY JUDGMENT RECORD WITH RESPECT TO
CONAGRA GROCERY PRODUCTS COMPANY, LLC, WITH
DEPOSITION TESTIMONY FROM RICHARD HUNTER AND CECIL
HUNTER (DOC. #1048)

Earlier this year, Plaintiffs learned of the existence of two additional witnesses, Cecil and Richard Hunter. The Court permitted Plaintiffs to take their depositions, Docs. ##1011, 1016, which have been filed with the Court, Docs. ##1029, 1030.

By that time, Conagra's Motion for Summary Judgment, Doc. #874, was already fully briefed and ripe for decision. Plaintiffs have now filed a Motion to Supplement Summary Judgment Record with Respect to Conagra Grocery Products Company, LLC, with the Deposition Testimony from Richard Hunter and Cecil Hunter. Doc. #1048. Conagra has filed a memorandum in opposition, Doc. #1054, arguing that some of the deposition testimony is inadmissible hearsay, that

neither witness identified any hazardous substances, and that the deposition testimony is not corroborated by other witnesses. No reply brief was filed.

In the Court's view, Conagra's arguments are certainly relevant to the weight to be given to the deposition testimony of Richard and Cecil Hunter. However, those arguments do not justify overruling Plaintiffs' motion to supplement the summary judgment record. The deposition testimony of these newly-discovered witnesses should be considered in connection with the pending summary judgment motion.

Accordingly, the Court SUSTAINS Plaintiffs' Motion to Supplement Summary Judgment Record with Respect to Conagra Grocery Products Company, LLC, with Deposition Testimony from Richard and Cecil Hunter, Doc. #1048.

Date: August 2, 2019



WALTER H. RICE
UNITED STATES DISTRICT JUDGE